

In the Matter of Merchant Mariner's Document No. Z-85521 and all other Seaman Documents

Issued to: ANTHONY ZAJKOWSKI

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1070

ANTHONY ZAJKOWSKI

This appeal has been taken in accordance with Title 46 United States Case 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 4 February 1958, an Examiner of the United States Coast Guard at Baltimore, Maryland suspended Appellant's seaman documents upon finding him guilty of misconduct. Four specifications allege that while serving as a wiper on board the American SS SANTA MERCEDES under authority of the document above described, on or about 1 January 1958, Appellant was drunk and disorderly; he caused a disturbance; he assaulted and battered a crew member, Ramkon Rodriguez; he assaulted Ramon Rodriguez with a dangerous weapon. A fifth specification alleges that while serving as above, on or about 4 January 1958, Appellant caused a disturbance in the crew messroom. Rodriguez was similarly charged and the two cases were heard in joinder with the consent of both seamen.

Appellant entered a plea of not guilty to the charge and each specification. After considering the evidence consisting of the testimony of the two seamen and several documentary exhibits, the Examiner rendered the decision in which he concluded that the charge and five specifications against Appellant had been proved. An order was entered suspending all documents, issued to Appellant, for a period of nine months outright and twelve months on eighteen months' probation. Rodriguez received an eight months' outright suspension and the same probationary suspension as Appellant.

The decision was mailed to Appellant 5 February 1958. Appeal was timely filed on 10 February and no supporting brief has been received to date.

FINDINGS OF FACT

From 4 December 1957 to 6 January 1958, Appellant was serving as a wiper on board the American SS SANTA MERCEDES and acting under authority of his Merchant Mariner's Document No. Z-85521. One of

Appellant's two roommates, Ramon Rodriguez, was also a wiper.

The ship was at sea on 1 January 1958 shortly after departing from Aruba, Nevertheless West Indies. Appellant and Rodriguez were in their room at 0015 when they became involved in a drunken argument. This led to a fight between the two seamen. The noise awakened the third roommate and, shortly thereafter, the two combatants left the room only to return an hour later. They caused a further disturbance by scuffling and arguing. They were more intoxicated than they had been earlier.

At approximately 0315, Appellant was in the passageway threatening Rodriguez with a flatiron. The latter reciprocated with an open pocket-knife. The Chief Mate disarmed both men but Appellant then obtained a fishing spear with which he threatened Rodriguez. The Chief Mate again disarmed Appellant. The two seamen were handcuffed and confined in the ship's hospital. Each had received minor injuries but not from the weapons involved.

On 4 January 1958, Appellant caused a disturbance in the crew messroom when he disrupted the serving of breakfast by provoking an argument with the crew messman. Appellant insisted upon being served scrambled eggs as soon as he had received three hard boiled eggs. Appellant was confined to the ship's hospital as a result of this incident.

Appellant has no prior disciplinary record with the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant was not given a fair hearing, he was deprived of his right to due process of law and the decision of the Examiner is against the weight of the credible evidence.

Appearance on appeal: Standard, Weisberg, Harolds and Malament
of New York City, by Lester E. Fetell,
Esquire, of Counsel.

OPINION

Appellant has not specified in what respects he feels that he was deprived of a fair hearing and due process of law, and that the decision is against the weight of the evidence. A minute re-examination of the record is not required under these circumstances. Review of the Examiner's decision is limited to specific exceptions and clear errors on the record. Attorney

General's Manual on the Administrative Procedure Act (1947), p. 84, note 5; Commandant's Appeal Nos. 939, 940, 1005, 10168 1046. In view of the blanket nature of this appeal, it is sufficient to state that the Examiner fully protected Appellant's rights at the hearing and that the findings are supported by substantial evidence with one minor exception.

There is not clear proof that Appellant assaulted and battered Rodriguez when they fought in their quarters. Their versions disagree and neither was accepted by the Examiner. There was no other witness to the incident until the third roommate was awakened after the fight had started. Hence, this finding is modified to find that Appellant was guilty of the lesser included offense of mutual combat.

It is my opinion that these infractions of discipline deserve the substantial order of suspension imposed by the Examiner. The conduct of Appellant and Rodriguez due to intoxication caused considerable confusion on board. It might well have resulted in interference with the operation of the ship while underway and serious injury to the two seamen.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 4 February 1958, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 10th day of September 1958.